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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,617	02/05/2004	John P. Streich	0275Y-227DVD	5076

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EXAMINER

LUGO, CARLOS

ART UNIT	PAPER NUMBER
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3676

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/772,617	Applicant(s) STREICH ET AL.	
	Examiner Carlos Lugo	Art Unit 3676	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-25, 27, 30-32, 66, 67 and 69-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-25, 27, 30-32, 66, 67 and 69-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to applicant's RCE filed on March 15, 2007.

Claim Objections

2. **Claims 69,71 and 72 are objected** to because of the following informalities:

- Claim 69 Line 1, change "for" to -on-.
- Claim 69 Line 5, change "said base" to -said arcuate base surface-.
- Claim 71 Line 1, change "for" to -on-.
- Claim 71 Line 6, change "said base" to -said arcuate base surface-.
- Claim 72 Line 1, change "for" to -on-.
- Claim 72 Line 4, change "said base" to -said arcuate base surface-.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

- The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. **Claims 22-25,27,30-32,66,67 and 69-72 are rejected** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 69,71 and 72 recites that the latch comprises a body that has the channel. Then, later on the claims, the applicant recites that the latch further includes a first member and a second member.

It is unclear what the applicant is trying to claim as his invention. As seen in Figure 10, the latch comprises a first member (95) and a second member (99). The first member comprises a channel (106), not an additional body or element.

Therefore, in order to continue with the examination, the claims will be examined as a latch comprising a body formed of a first member and a second member, wherein the first member defines a channel. Appropriate correction is required.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 22,24,27,31,69,71 and 72 are rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,976,787 to Plourde in view of US Pat No 5,283,932 to Richardson et al (Richardson '932).

Regarding claims 69,71 and 72, Plourde discloses a latch comprising a body (14a) defining a channel having an arcuate base surface continuous across the channel (Figure 2), two sidewalls extending from the arcuate base surface and two flanges (28,30) extending from the sidewalls towards one another.

However, Plourde fails to disclose that the latch is comprised of a first and a second member, where the first member has a portion that extends through the second member when the second member covers the first member. Plourde discloses a one-piece body.

Richardson '932 teaches that it is well known in the art to provide a latch having a body that is comprised of a first and a second member (35 and 30 respectively), where the first member has a portion that extends through the second member when the second member covers the first member.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the latch body described by Plourde as separate members fastened together, as taught by Richardson '932, since a one-piece construction, in place of separate elements fastened together, is a design consideration within the skill of the art.

As to the limitation that the first member is molded to the second member (claim 72), the term "molded" is considered as a method step in an article claim. Applicant is reminded that the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight.

As to claim 22, Plourde illustrates that the base surface is arcuate along both a longitudinal and lateral axis.

As to claim 24, Plourde, as modified by Richardson '932, illustrates that the indicia indicates a locked and unlocked position (unlock, Figure 3, fully locked, Figure 4).

As to claim 27, Plourde, as modified by Richardson '932, illustrates that the first member (35) is capable of provide rigidity to the latch.

Art Unit: 3676

As to claim 31, Plourde, as modified by Richardson '932, teaches that the second member (33 and 34) is a soft material providing a gripping surface.

7. **Claim 23 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,976,787 to Plourde in view of US Pat No 5,283,932 to Richardson et al (Richardson '932) as applied to claim 69 above, and further in view of US Pat No 4,576,307 to Frydenberg.

Plourde, as modified by Richardson '932, fails to disclose that one of the flanges includes a cutout enhancing coupled with the rails.

Frydenberg teaches that it is well known in the art to have a latch (16 and 30) that comprises opposing flanges, wherein at least one flange includes a cutout enhancing that would be coupled with the rails (at the sides of 18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the latch member described by Plourde, as modified by Richardson '932, with a cutout at either flange, as taught by Frydenberg, in order to help in the insertion of the latch around the rails.

8. **Claim 25 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,976,787 to Plourde in view of US Pat No 5,283,932 to Richardson et al (Richardson '932) as applied to claim 24 above, and further in view of US Pat No 6,981,299 to Savicki.

Plourde, as modified by Richardson '932, fails to disclose that the indicia also indicate direction.

Savicki teaches that it is well known in the art of latches to provide directional indicia in order to aid a user to move the latch (arrow in Figure 2).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device described by Plourde, as modified by Richardson '932, with directional indicia, as taught by Savicki, in order to aid a user to move the latch.

9. **Claim 30 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,976,787 to Plourde in view of US Pat No 5,283,932 to Richardson et al (Richardson '932) as applied to claim 69 above, and further in view of US Pat No 3,710,761 to Gregory.

Plourde, as modified by Richardson '932, fails to disclose that the body has an arcuate outer surface enables manipulation by a user.

Gregory teaches that it is well known in the art to provide a latch having a body (17) that has an arcuate outer surface.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the body described by Plourde, as modified Richardson '932, with an arcuate outer surface, as taught by Gregory, in order to enable a user to manipulate the latch.

10. **Claim 32 is rejected** under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,976,787 to Plourde in view of US Pat No 5,283,932 to Richardson et al (Richardson '932) as applied to claim 69 above, and further in view of US Pat No 5,275,027 to Eklof et al (Eklof) and in view of US Pat No 4,153,178 to Weavers.

Plourde, as modified by Richardson 932, fails to disclose that the first member is formed from polypropylene and the second member formed from krayton.

Weavers teaches that it is well known in the art to use polypropylene as a material to make a member of a latch (Col. 3 Lines 10-15).

Eklof teaches that krayton is also a well-known material to make a member of a latch (Col. 4 Lines 29 and 30).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use materials as polypropylene and krayton, as taught by Weavers and Eklof, to make or manufacture a latch as described by Plourde, as modified by Richardson '932, since the selection of a known material based upon its suitability for the intended use is a design consideration within the level of skill of one skilled in the art.

11. Claims 66,67 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,976,787 to Plourde in view of US Pat No 5,283,932 to Richardson et al (Richardson '932) as applied to claim 24 above, and further in view of US Pat No 6,442,804 to Turvey et al (Turvey) and US Pat No 3,660,875 to Gutman.

Plourde, as modified by Richardson '932, fails to disclose that the second member includes indicia, wherein the first and second indicia have a distinctive color.

Turvey teaches that it is well known in the art of latches to provide a first and a second member (30 and 60) with corresponding indicia.

It would have been obvious to one having ordinary skill in the art of latches at the time the invention was made to provide the first and the second members described

Art Unit: 3676

by Plourde, as modified by Richardson '932, with indicia, as taught by Turvey, in order to give the appropriate indication to the user.

As to the colors, Gutman teaches that it is well known in the art to use colors as indicators (Col. 3 Lines 1-6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device described by Plourde, as modified by Richardson '932, with colors, as taught by Gutman, in order to aid the user.

Response to Arguments

12. Applicant's arguments with respect to the rejection in view of Richardson '932, as modified by Gregory, have been considered but are moot in view of the new ground(s) of rejection.

Further, the applicant is reminded that the claims do not clearly claim the invention. At the instant, a diversity of interpretations could be made since the claims do not clearly define the channel (that extends the whole longitudinal length of the first element), the arcuate surface (that is continuous across and along the entire longitudinal length of the channel), how the second member covers the first member (that the second member is located above the first member so as to cover the member), etc.

Further, the applicant is reminded that the invention is drawn to the latch, not to the latch in combination with the tool container comprising the rails. The rails limitation is considered as the intended use of the latch. The recitation with respect to the manner in which an apparatus is intended to be employed does not impose any

Art Unit: 3676

structural limitation upon the claimed apparatus, which differentiates it from a prior art reference disclosing the structural limitations of the claim. Therefore, the examiner requires the applicant to clearly claim the invention in order to overcome any possible interpretation of the claims in the future.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number is 571-272-7058. The examiner can normally be reached on 10-7pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3676

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read 'CL' followed by a horizontal line.

Carlos Lugo
Patent Examiner
Art Unit 3676

March 23, 2007.